

SOUTH CAROLINA PREGNANCY ACCOMMODATIONS ACT

SCASA Personnel Winter Conference
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INTENT

- To combat pregnancy discrimination;
- Promote public health;
- Ensure full and equal participation for women in the labor force;
- By requiring employers to provide **reasonable accommodations** to employees for medical needs arising from pregnancy, childbirth, or related medical conditions.

BACKGROUND

- Two-thirds of South Carolina women who gave birth in the last year were employed.
- Some women may develop pregnancy-related conditions that require minor adjustments at work.
- Pregnant employees denied accommodations may be at risk of complications that jeopardize their health and the health of their child.

BACKGROUND

“Current workplace laws are inadequate to protect pregnant women from being forced out or fired when they need a simple, reasonable accommodation in order to stay on the job.”

Family Medical Leave Act

- provides eligible employees with up to 12 weeks of unpaid, job-protected leave per year.

BACKGROUND

“Current workplace laws are inadequate to protect pregnant women from being forced out or fired when they need a simple, reasonable accommodation in order to stay on the job.”

American With Disabilities Act (ADA)

- ADA mandates that certain employers provide reasonable accommodations to employees with disabilities;
- Pregnancy itself is not a disability, but complications due to pregnancy can be

BACKGROUND

“Current workplace laws are inadequate to protect pregnant women from being forced out or fired when they need a simple, reasonable accommodation in order to stay on the job.”

Pregnancy Discrimination Act of 1978

- Amended Title VII of the Civil Rights Act of 1964 to prohibit sex discrimination on the basis of pregnancy.

BACKGROUND

“Current workplace laws are inadequate to protect pregnant women from being forced out or fired when they need a simple, reasonable accommodation in order to stay on the job.”

Young v. United Parcel Service, Inc. (2015)

- The United States Supreme Court held that a pregnant employee could make a PDA discrimination claim by demonstrating that the employer denied her request for an accommodation (light duty), but granted that accommodation to others for different non-pregnancy related reasons.

PROTECTED CLASS

- The SC Human affairs law now explicitly prohibits discrimination on basis of “pregnancy, childbirth, or related medical conditions, including, but not limited to lactation.”
- Women affected by pregnancy, childbirth, or related medical conditions must be treated the same for all employment-related purposes.

REASONABLE ACCOMMODATIONS

Interactive Process

- Step 1 – Accommodation request by employee
- Step 2 – Information gathering if necessary
- Step 3 – Formulate accommodations (ideally, in conjunction with employee)

REASONABLE ACCOMMODATIONS

- More frequent or longer break periods;
- More frequent bathroom breaks;
- Providing a private place, other than a bathroom stall for the purpose of expressing milk;
- Modifying food or drink policy;
- Providing seating or allowing the employee to sit more frequently, if the job requires the employee to stand;

REASONABLE ACCOMMODATIONS

- Providing assistance with manual labor; limits on lifting;
- Temporarily transferring the employee to a less strenuous or hazardous vacant position, if qualified;
- Providing job restructuring or light duty, if available;
- Acquiring or modifying equipment or devices necessary for performing essential job functions; and
- Modifying work schedules.

REASONABLE ACCOMMODATIONS

Not required:

- Hire new employees that the employer would not have otherwise hired;
- Discharge an employee, transfer another employee with more seniority, or promote another employee who is not qualified to perform the new job;

REASONABLE ACCOMMODATIONS

Not required:

- Create a new position, including a light duty position for the employee, unless a light duty position would be provided for another equivalent employee; or
- Compensate an employee for more frequent or longer break periods, unless the employee uses a break period which would otherwise be compensated.

UNLAWFUL EMPLOYMENT PRACTICES

- Punish or refuse to hire employees for requesting or using a reasonable accommodation.
- Require an employee to take leave under any law, if another reasonable accommodation can be provided.
- Require an employee to accept an accommodation if the individual doesn't have a known limitation or if the accommodation is unnecessary to perform the job.

NOTICE AND POSTING REQUIREMENTS

- By September 14, 2018, provide written notice to all employees of the right to be free from discrimination for medical needs arising from pregnancy, childbirth or other related medical conditions.
- For new employees – written notice at the commencement of their employment
- Update SHAC Poster.

South Carolina Law Prohibits EMPLOYMENT DISCRIMINATION

Based on: Race, Color, Religion, National Origin, Sex, including Pregnancy & Childbirth (or related medical conditions), Age (40+), or Disability

Examples of conduct covered under the law:

- ❖ Failure to Hire or Promote
- ❖ Unequal Wages
- ❖ Harassment/Intimidation
- ❖ Discipline/Demotion/Suspension/Termination
- ❖ Applying Different Terms and Conditions of Employment
- ❖ Failure to Reasonably Accommodate due to a **disability, religion, pregnancy, childbirth or related medical conditions, including, but not limited, to lactation**
- ❖ Retaliation as a result of complaining about discrimination, seeking an accommodation, or participating in a discrimination investigation

South Carolina Human Affairs
Commission
1026 Sumter Street, Suite 101
Columbia, SC, 29201
www.schac.sc.gov
Phone: 803-737-7800
Toll- Free: 1-800-521-0725



How to report unlawful discrimination:

- ❖ Complete a questionnaire via phone, in-person, mail, or online at www.schac.sc.gov. Once submitted, a SCHAC Intake Officer will contact you and assist you in filing a formal complaint.
- ❖ You must file a formal complaint to launch an investigation.
- ❖ There are strict time limits for filing charges of employment discrimination. To preserve the ability to act on your behalf and to protect your right to file a private lawsuit, should you ultimately need to, you should contact SCHAC promptly when discrimination is suspected.

EQUAL EMPLOYMENT OPPORTUNITY IS THE LAW

In Addition to Employment, the Mission of SCHAC is to eliminate and prevent unlawful discrimination in:

Housing on the basis of race, color, national origin, religion, sex, familial status or disability.

Public Accommodations on the basis of race, color, national origin or religion.

Employers, including each State Agency, or department of the State, and local subdivision thereof, **SHALL POST, KEEP POSTED, AND MAINTAINED IN CONSPICUOUS PLACES UPON THEIR PREMISES** where notices to employees and applicants for employment are customarily posted a notice to be prepared and distributed by the Commission setting forth excerpts from and/or summaries of, pertinent provisions of the Human Affairs Law, and information pertinent to the filing of a complaint.

ADDITIONAL CONSIDERATIONS

- Update EOE and other non-discrimination statements.
 - Revise policies regarding workplace accommodations to include reference to pregnancy.
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